

Quarterly Report
of the
ATTORNEY GENERAL
of
ALABAMA



For The Period
From October 1, 1961
Through December 31, 1961

VOLUME 105

MACDONALD GALLION, Attorney General



T. O. "Tillie" Walker

QUARTERLY REPORT
of the
ATTORNEY GENERAL

of
A L A B A M A

For the Period

From October 1, 1961

Through December 30, 1961

TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS
OF ALABAMA:

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from October 1, 1961, through December 31, 1961, is published in compliance with the provisions of Title 55, Section 228, Code of Alabama 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education, and the deputy or county solicitor of his county. This section also requires that I send a copy of this report to each circuit solicitor and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, county, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

MACDONALD GALLION
Attorney General

MACDONALD GALLION

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OPINIONS

November 7, 1961

Honorable John A. Sankey

Judge of Probate

Probate Court of Montgomery County

Montgomery, Alabama

License Taxes — Trailers

1. Under Act No. 44 of the Special Session of the 1961 Legislature, approved September 15, 1961, the \$3.00 license levied on "house trailers" under the provisions of said Act is applicable only to those house trailers which are used or to be used on the highways of this State during the fiscal or licensed year. This \$3.00 license does not apply in cases where a house trailer is parked in a trailer court or not otherwise moved on the highways at any time during the license or fiscal year.

2. The separate and distinct ad valorem taxes on such trailers under Title 51, Section 21, Code of Alabama 1940, where otherwise due to be paid would in all cases where such trailers are kept in this State, be payable regardless of whether or not such trailers are used on the highways.

Opinion by Assistant Attorney General Burton

Dear Sir:

Your request for an official opinion bearing date of October 3, 1961, is as follows:

"House Bill No. 53, providing for a license tax and the assessment and collection of ad valorem taxes on house trailers, was passed in the special session of the legislature.

"Under this Act, after October 1st every house trailer except those in the stock of dealers shall be liable for the payment of a license tax of \$3.00. Please advise this office as soon as possible whether a trailer which is parked in a trailer court is subject to this \$3.00, and should be assessed and secure a license plate.

"Please give this matter your prompt attention, as the question has already arisen in this tax year."

Your question is answered to the effect that the \$3.00 license tax provided for in Act No. 44 of the Special Session of the 1961 Legislature, approved September 15, 1961, is applicable only where a house trailer is

used on the highways of this State during the license or fiscal year. Where a house trailer is not pulled by another vehicle or used on the highways, and is parked in a trailer court or otherwise remains stationary during the license or fiscal year, then this \$3.00 license tax would not apply.

This license tax is a separate and distinct tax from the ad valorem taxes which are levied under Title 51, Section 21, Code of Alabama 1940, on all property not expressly exempted under such laws.

Act No. 44, *supra*, while levying the license tax on such trailers, also provides a means of preventing house trailers subject to the license from escaping the payment of ad valorem taxes somewhat similar to that prescribed as to motor vehicles under Title 51, Section 704, as amended, Code of Alabama 1940.

The Act as it relates to the levy of the \$3.00 license tax on house trailers, provides in material part, as follows:

"On and after October 1, 1961, every house trailer, except those in the stock of dealers, shall be liable for the payment of a license tax of three dollars and a license plate issued therefor, which shall be displayed on the back of such trailer, in the same manner, and for the same issuance fees charged, as license plates for motor vehicles." (Emphasis supplied)

From the above-quoted provisions taken from the Act, and especially those that have been emphasized or italicized, it clearly appears that the license plate issued in connection with such license is to be displayed in the same manner, and is to be sold under particularly the same conditions and requirements as those relating to other vehicles used on the highways as are prescribed under the provisions of Chapter 20, Article 8, Title 51, Code of Alabama 1940. It clearly appears then that it was the intent of the Legislature to include Act No. 44, *supra*, within the purview of the laws relating to vehicles used on the highways as are contained in Chapter 20, Article 8, Title 51, *supra*, and that house trailers for the purpose of the license under Act No. 44, *supra*, be subject to the same general provisions.

It is also well established that the motor vehicle licenses levied under the provisions of Chapter 20, Article 8, Title 51, *supra*, are applicable only when the motor vehicles covered thereby are operated or used on the highways of this State during the fiscal or license year, beginning October 1, and ending September 30.

Therefore, when Act No. 44, *supra*, is read in *pari materia* with the provisions of Chapter 20, Article 8, Title 51, *supra*, there is no doubt but that the \$3.00 license tax levied by said Act on house trailers applies only when such trailers are used or are to be used on the highways of

this State during the license year. The same conditions, however, do not apply to ad valorem taxes on such trailers, which would be payable in all cases, where otherwise due, regardless of whether or not such trailers are used on the highways.

Very truly yours,

MACDONALD GALLION
Attorney General

November 8, 1961

Honorable Ashford Todd

Judge of Probate

Madison County Court House

Huntsville, Alabama

License Taxes—Music Transmitted by Wire.

1. In an opinion of this office contained in Quarterly Report of the Attorney General, Vol. 52, Page 233, and dated September 15, 1948, it was held that under the 1947 amendment (General Acts 1947, Page 522) to Title 51, Section 613, Code of Alabama 1940, that music transmitted from a central location or studio by wire or cable is included within the scope of this license statute, regardless of whether the speakers or receivers used in the reception of such music are coin-operated or not.

2. The intent of the Legislature to include such music under either of these conditions, and that it be taxed accordingly seems clearly to be manifested by the language of said 1947 amendment to Section 613, *supra*.

3. Any doubt concerning the correctness of said ruling of this office under the 1947 amendment to Section 613, *supra*, has now been completely removed in view of the wording of Act No. 867 of the Regular Session of the 1961 Legislature, approved September 9, 1961, and effective October 1, 1961, which further amends Section 613 insofar as it is said to relate to music transmitted by wire or cable.

Opinion by Assistant Attorney General Burton.

Dear Sir:

Your request for an official opinion bearing date of April 7, 1961, and which has been recently renewed, is as follows:

"We have a question involving Section 613, Title 51, Alabama Code of 1940, as amended, which section is entitled 'Vending Machines.'

"A corporation known as Amtec Company of Huntsville, Inc. provides background music for certain business establishments in the City of Huntsville. The Music originates at the vendor's place of business through the use of tape recordings. Telephone lines are utilized to carry the music into the business establishments of customers. The vendor installs speakers in the walls and ceilings of the stores and businesses and charges a monthly fee by contract for the music service. Some of the speakers are owned by the vendor and some are owned by the customers. None of the speakers are coin operated, and no coin operated or other machine for the reproduction of music is located on the premises of any customer. No 'vending machine' is involved anywhere in the operation. The number of speakers installed in each establishment depends upon the size and character of the building to be served, with some business locations requiring as many as thirty speakers to properly provide the background music.

"The License Inspector of this County takes the position that the vendor is liable to pay the license tax of \$3.00 on each speaker in excess of five in each business establishment, and \$8.00 for each location having five speakers or less.

"The vendor, on the other hand, takes the position that no tax is payable for the reason that no vending machine is involved, and that this statute was never intended to and cannot be construed to apply to vendor's type of business. Vendor further insists that the language of Section 613 is so incomprehensible when applied to vendor's type of operation that when applied to such type of operation the Section is unenforceable. Vendor says in fact that the imposition of this tax would destroy its business as the fees would far exceed the revenues received under existing contracts or obtainable for the service. Vendor also says that this tax, if it can be construed as applicable, is so excessive and unreasonable in amount as to be confiscatory and unconstitutional. Vendor further says that Section 613 is not constitutional or in the alternative that the act adopting or amending Section 613 is unconstitutional for that too many unrelated subjects are dealt with in the same paragraph.

"Your opinion is requested as to the applicability of Section 613, Title 51, Alabama Code of 1940, as amended, to the situation described."

Your question is answered in the affirmative and to the effect that the license tax levied under Title 51, Section 613, as amended, Title 51, Code of Alabama 1940, does apply to the situation described by you, and to cases where no coin-operated vending machine is used in connection with either the transmittal or the reception of music transmitted by wire or cable.

In a very comprehensive opinion dated September 15, 1948, and reported in Quarterly Report of the Attorney General, Vol. 52, Page 233, this office has clearly held that under the language itself of the 1947 amendment (Act No. 688, General Acts 1947, Page 522) to Section 613, *supra*, it imposes in addition to the other subjects of the license, a tax upon music transmitted by wire or cable whether the devices used in the transmittal or reception of such music are coin-operated machines or not. The basis of this opinion was that while generally speaking the license tax is said to apply to the operators of coin-operated vending machines, the Legislature has also by the plain wording of this statute, as so amended, expressly included within its scope music transmitted by wire or cable without making any requirement that a coin-operated machine be used in either transmitting or receiving such music.

By Act No. 867 of the Regular Session of the 1961 Legislature, approved September 9, 1961, and effective October 1, 1961, Section 613 of Title 51, *supra*, was further amended insofar as it relates to music transmitted by wire or cable, to provide in pertinent part, as follows:

“...provided, however, that where the music transmitted by wire or cable from any central point or studio, whether such point or studio is situated within or without such location, establishment, or place of business, **is not coin-operated or where no deposit of a coin or other thing of value into any machine is necessary in order that music may be heard**, then each person, firm or corporation engaged in the business of transmitting music by wire or cable may pay **in lieu** of the speaker or transmitter tax specified above a privilege tax as follows: In counties of 60,000 inhabitants or less, \$30.00; in counties of 60,001 and not exceeding 125,000 inhabitants, \$60; in counties of 125,001 inhabitants and over, \$80;...” (Emphasis supplied.)

The parts of the amendment which have been emphasized in the above quotation serve to clearly show that under the 1961 amendment it was not only the intent of the Legislature to tax such business even where no coin-operated machine was involved but that this was also true when such business was brought within the scope of this statute when it was amended in 1947. It is obvious then that the opinion of this office reported in Quarterly Report of the Attorney General, Vol. 52, page 233, is correct.

The question of whether or not Section 613, as amended, *supra*, as so construed would conflict with Section 45 of the Alabama Constitution, or would be invalid on other constitutional grounds, is a matter that addresses itself entirely to the courts.

Very truly yours,

MACDONALD GALLION

Attorney General

November 22, 1961

Honorable Carl E. Sellers

Judge of Probate

Houston County

Dothan, Alabama

Licenses — Engineers and Land Surveyors.

1. Section 522, Title 51, Code of Alabama 1940, levies a license tax for the privilege of practicing the profession of engineering for the public.

2. Cognizance is given to the distinction between revenue statutes and regulating statutes; Section 522, *supra*, is a revenue statute; Sections 129 and 140, Title 46, Code of Alabama, 1940, are regulatory statutes and compliance or non-compliance therewith does not effect the levy of the license tax under Section 522, *supra*.

Opinion by Assistant Attorney General Burson.

Dear Sir:

Your request for an official opinion bearing date of August 25, 1961, is as follows:

"On August 4, 1961, W. M. Lee and O'Neal Ham, both Civil Engineers and Officers in the corporation of Lee, Wainwright & Ham, Inc. were cited by the State License Inspector to buy a State Privilege License as provided in Title 51, Chapter 20, Code of Alabama 1940, Section 522, Engineers. Mr. Lee is a Registered Engineer in the State

of Alabama and was registered on January 21, 1961. Mr. Ham is not at this time a registered engineer. Mr. Lee graduated from college in August 1955 and has been engaged in engineering work since that time. Mr. Ham graduated in March of 1958 and also has been engaged in engineering work since that date.

"Section 522 provides that no license shall be required for the first two years that an engineer shall 'practice' his profession. Code of Alabama 1940, Title 46, Chapter 7 defines who shall 'practice' engineering. Since Chapter 7 states that an engineer must be registered to 'practice' engineering, Mr. Lee and Mr. Ham contend that they are not required to buy a license until after they have been registered to practice engineering for two years. The license inspector contends that he shall buy a license after he has been out of school two years.

"An official opinion on this matter would be appreciated."

Section 522, Title 51, Code of Alabama 1940 provides as follows:

"S. 522. Engineers. — Each person practicing for the public the profession of civil, electrical, mining, mechanical or radio engineering, shall pay an annual license of twenty dollars to the state, but no license shall be paid to the county. If such business is conducted as a firm or corporation in which more than one engineer is engaged, each engineer so engaged shall pay a license of twenty dollars. Provided that no such engineer shall be required to pay this license until after he practiced his profession for two years in this state or elsewhere. Providing further that an engineer who is an employee of the state or of any county or municipality at a fixed salary and who engages in no other engineering work for compensation is not subject to this license when so employed."

The statute levies a license tax on engineers for the privilege of engaging in the practice of engineering "for the public." The date of his graduation from college is not controlling. If he is engaged in the practice of engineering for the public either as an individual or in association with other engineers, the exemption privilege granted by Section 522, is effective for the first two years that he practices his profession. If he has practiced for two years in another state or territory the exemption privilege has been exhausted by such practice in another jurisdiction and the license tax levy under Section 522, is applicable as soon as he begins practice in Alabama.

Chapter 7, Title 46, Code of Alabama 1940 does not affect the levy of the tax under Section 522, *supra*, nor the exemption granted therein. Section 129, Title 46, Code of Alabama 1940, requires that an engineer be registered prior to "practicing his profession for the public" and Section 140, Title 46, Code of Alabama 1940, establishes standards for registra-

tion. Sections 129 and 140, *supra*, are regulatory statutes and the courts and this office have given recognition to a distinction in the application of revenue statutes and regulatory statutes. The state, by the regulatory statutes, has established standards for engaging in the practice of engineering and has provided for penalties for the failure to comply therewith.

Section 522, *supra*, is a revenue statute and the only requirement for collecting the tax levied under Section 522, is that the engineer be practicing his profession for the public. Registration under and compliance with provisions in Chapter 7, Title 46, Code of Alabama 1940, are not conditions precedent to the incidence of the tax under Section 522, *supra*. See **Casus v. Lee**, 23 Ala. 396, 183, So. 185, 118 A.L.R. 822, 827 and **Quarterly Reports of the Attorney General** Volume 86, Page 32, and Volume 48, Page 121.

It follows therefore, that if Mr. Ham and Mr. Lee are engaged in the "practice of engineering for the public" within the meaning of Section 522, *supra*, and have been so engaged for more than two years, they owe the tax levied under Section 522, Title 51, Code of Alabama 1940.

Very truly yours,

MACDONALD GALLION

Attorney General

November 22, 1961

Honorable James T. Beeland

Ex-Officio Chairman

Court of County Commissioners

Butler County

Greenville, Alabama

Counties — Municipalities — Airports — Funds.

1. A county may individually, or in cooperation with the State or the municipalities of the county, appropriate money for the purpose of providing airport facilities for the county.
2. The county governing body may, in its discretion, make an appropriation to a municipality of the county for the

purpose of construction of an airport and, by agreement with such municipality, place the management, control, operation and maintenance of such airport in the hands of the municipality.

3. Opinion reported in Quarterly Report of Attorney General, Vol. 92, page 42 modified to conform to the opinion here expressed.

Opinion by Assistant Attorney General Hardin.

Dear Sir:

Your request for an official opinion bearing date of November 15, 1961, is as follows:

"Does the Court of County Commissioners have the authority under Title 12, Section 12, Sub-Section 22, 1940 Code of Alabama, Recompiled 1958, to make an appropriation to a municipality from its General Fund to assist said municipality in the construction of an airport to be owned and operated exclusively by the municipality?

"In this case, the State Dept. of Aeronautics is participating in the amount of \$30,000, the municipality \$15,000 and Commissioners Court is desirous of contributing \$15,000 toward this project from its General Fund.

"The court deems an airport very necessary in the locating and promoting manufacturing plants, factories and other industries throughout the county."

In addition to your written request set out above, you have discussed this matter with me orally and have advised that it is the desire of Butler County to contribute its pro rata share of \$15,000 toward the construction of this airport but that the county does not desire to be considered as a joint owner of said airport nor to be in any way charged with the operation or maintenance of same. You inquire, in essence, as to whether the county can make an appropriation to the city of Greenville to share in the construction of said airport but not be considered as a joint owner of same or be charged with any operational or maintenance responsibility associated therewith.

In answer to your specific inquiry, I do not believe that the county would be privileged to make the appropriation mentioned under the authority cited above, that is, Title 12, Section 12, Sub-Section 22 of the Code of Alabama 1940. However, I do believe that there is ample authority to be found in the general statutes of this state to permit such

an appropriation under the conditions mentioned in your inquiry and as amplified by your discussion with this office.

There is no question whatsoever but that a county may expend its public funds to acquire, establish, construct, expand, own, control, equip, improve, maintain, operate and regulate airports or landing fields within the county. Such authority is set out in Title 4, Section 22, Code of Alabama 1940, Recompiled 1958 and leaves no doubt as to the authority of the county in this respect. Neither does there seem to be any question but that the county may accomplish such purpose either jointly or severally. In my opinion, the county may cooperate with the state, or any of the municipalities of the county, in making provision for such airport. Furthermore, the opinions of this office have indicated that a county may utilize monies from one of several of the funds of the county for such purpose. An appropriation for this purpose could be made from the general fund of the county, Quarterly Report of Attorney General, Vol. 92, page 41; from the road and bridge and public building fund of the county, Quarterly Report of Attorney General, Vol. 78, page 48 or from the money accruing from the gasoline tax on aviation gasoline, Quarterly Report of Attorney General, Vol. 97, page 17.

As I have stated above, in my opinion, the county may participate in making provision for airport facilities for the county and it may do so in any of the several ways cited above and through appropriation from any of the funds mentioned above. It is my further opinion that the county governing body would be vested with a discretion as to the means or method by which it might make provisions for these airport facilities. If it chooses to do so by making an appropriation to a municipality of the county for use in providing such airport facilities it is privileged to do so. In my opinion, the county could limit its participation to the making of an appropriation of a sum of money for the construction only of such airport and would be permitted, by agreement, with the city to place the management, control and operation of the airport in the hands of the municipality concerned.

The above conclusion is supported in full by a former opinion of this office found in Quarterly Report of Attorney General, Vol. 70, page 18 wherein the question was considered as to whether a county might appropriate funds to a municipality for the purpose of aiding in the construction of a public hospital and place the authority to manage, operate, control and maintain such hospital in the hands of the municipality. In such opinion it was concluded, as I have concluded here, that both the city and the county were authorized to either jointly or severally appropriate their funds for the construction of the hospital and, furthermore, that a county is authorized to contribute its funds for the construction of a hospital to be owned, operated and maintained by a city. Such opinion further stated that the county, in its discretion, might limit its participation to an appropriation of a sum of money for the construction only, and might, by an agreement with the city, place the management, control and operation of the hospital and the maintenance thereof in the city.

As I see it, this is the precise question which you here present and, in my opinion, like reasoning would be here applicable. I can see no distinction between the situation considered in the opinion found in Vol. 70, supra, and that here under consideration. Consequently, I am of the opinion that your county governing body would be premitted to make an appropriation to the municipality concerned for the construction of the airport in question and, by agreement with such city, all management, control and operation, as well as maintenance, would be placed in the hands of the city.

I find certain language in the opinion reported in Quarterly Report of Attorney General, Vol. 92, page 42 which might be considered to conflict with the opinion here expressed. It should be noted that in such opinion, as well as in the opinion there cited as authority, Quarterly Report of Attorney General, Vol. 87, page 15, the principle question being considered was that of the limitations imposed by constitution and statute on the use of gasoline tax money. However, if there be conflict between this former opinion and the one here rendered, the former is hereby modified so as to conform with the opinion here expressed.

Very truly yours,

MACDONALD GALLION

Attorney General

December 28, 1961

Honorable John C. Curry

Savings and Loan Commissioner

State Banking Department

CAPITOL

Banks and Banking — Mortgages.

Within limits set out in Amendment No. 154 to the State Constitution, approved November 8, 1960, savings and loan associations chartered under the laws of other states and/or the United States, may take and hold mortgages on real property located within this State.

Opinion by Assistant Attorney General Clark.

Dear Sir:

I have your request for an official opinion bearing date of November 9, 1961, which is as follows:

"Amendment # 154 to the State Constitution, approved November 8, 1960, provides, in part; 'Any corporation which is not organized under the laws of this state and has no place of business in this state may take and hold mortgages on real property located within this state, . . .'

"A question has been presented as to whether or not the above Amendment # 154 is applicable to savings and loan associations chartered under laws of states other than Alabama or under laws of the United States when located outside of Alabama, in their taking and holding of mortgages within this state where the taking and holding of such mortgages is within the legally prescribed limits of the regular lending area of said association.

"In considering this question attention is directed to Section 250 of Title 5 of the Code of Alabama of 1940, which section specifically prohibits foreign corporations from transacting 'any business of a savings and loan association within this state or maintain an office in this state for the purpose of transacting such business.'

"We shall thank you to give us your opinion as to the answer to question presented in paragraph two above."

Section 1. of Amendment No. 154 provides, in part, as follows:

"Section 1. Any corporation which is not organized under the laws of this State and has no place of business in this State may take and hold mortgages on real property located within this State, deposit the proceeds thereof in a bank account, or bank accounts, in this State, collect the debts secured thereby and may appoint a custodian or collection agent, who must be duly licensed under the laws of this State, to engage in the business of Mortgage Loan Broker, to hold for such non-resident such securities, collect such debts, manage any property acquired by foreclosure thereof, sell and dispose of any property acquired by foreclosure thereof and enforce the provisions of such mortgages and no such foreign corporation shall be deemed to be doing business in this State solely by reason of doing any or all of the acts designated herein;"

This section provides that the taking and holding of such mortgages and of appointing a duly licensed Mortgage Loan Broker as agent for the collection management, disposal, etc. shall not be deemed to be doing business in Alabama.

Title 5, Section 250, Code of Alabama 1940, provides as follows:

"S. 250. Foreign associations may not operate.—No foreign corporation shall transact any business of a savings and loan association within this state or maintain an office in this state for the purpose of transacting such business. Federal savings and loan associations, incorporated pursuant to an act of congress known as the Home Owners' Loan Act of 1933, are not foreign corporations, and any such federal association shall be subject to the same taxation and entitled to the same privileges as associations subject to this chapter."

It is noted that Amendment No. 154 refers to "doing business in Alabama" whereas Title 5, Section 250, Code of Alabama 1940, refers to "transacting business."

"... To do business in the state imports a carrying on of business of the corporation for the purpose of its organization, while the transaction of business rather imports the idea of isolated transactions." Vol. 13, Words and Phrases, Page 230.

The Supreme Court of Alabama has held that "the statutory phrase 'engaging in or transacting any business' does not differ in substance or in meaning from the constitutional phrase 'do any business.' Const. 1875, Art. 14, Section 4; Const. 1901, Section 232." **Friedlander Bros. v. Deal**, 218 Ala. 245, 118 So. 508.

The above case was cited in *J. R. Watkins Co. v. Hamilton*, 32 Ala. App. 361, 26 So. 2d 207, and wherein the Court held that the two phrases were synonymous.

Amendment No. 154 provides that any corporation may take and hold mortgages and may appoint a licensed Mortgage Loan Broker as custodian or collection agent.

It is my opinion that Amendment No. 154 is applicable to savings and loan associations chartered under laws of other states than Alabama or under the laws of the United States when located outside of Alabama when such business is confined to the limits set out in such amendment as said amendment is self-executing and supercedes the provisions of Section 250, *supra*.

Yours very truly,

MACDONALD GALLION

Attorney General

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